



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 172602

Pursuant to petition filed March 9, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on Thursday, April 21, 2016 at 01:15 PM at , Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services - OIG
PO Box 309
Madison, WI 53701

Respondent:

██████████
██████████
██████████

ADMINISTRATIVE LAW JUDGE:

Michael O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The respondent (██████████) is a resident of Michigan who received FoodShare benefits in Sawyer County from November 18, 2013 through October 31, 2014.

2. On March 14, 2016, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent provided false information to receive food stamps from two states at once.
3. The respondent failed to appear for the scheduled April 21, 2016 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.
4. The petitioner received \$2,166 in FoodShare benefits through the State of Wisconsin from November 18, 2013, through October 31, 2014. During this period he also received benefits through the State of Michigan.

DISCUSSION

FoodShare recipients commit an intentional program violation if they intentionally make a fraudulent statement about where they reside in order to receive benefits from two different places at once. A FoodShare recipient loses his eligibility for the program for 10 years if the department proves by clear and convincing evidence that he intentionally violated this rule. 7 CFR §§ 273.16(b)(5). The Department seeks to disqualify the respondent for that period because it contends that fraudulently reported that he lived in Wisconsin, which allowed him to receive over \$2,000 in benefits here while he was already receiving benefits in Michigan

Clear and convincing is a middle level of proof that requires the Department to show that more than just a preponderance of the evidence supports its position but does not require it to eliminate all reasonable doubt, as it would have to in a criminal case:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959)*Kuehn*, 11 Wis.2d at 26.

Wisconsin Jury Instruction – Civil 205 explains that this level of evidence must clearly have more convincing power than the opposing evidence, but it does not require absolute certainty:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

The *McCormick* treatise suggests that the standard “could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992). Thus, to find that the respondent intentionally violated the FoodShare program’s rules, the evidence must induce a firm conviction that he falsely asserted he lived in Wisconsin in order to receive FoodShare through this and another state at the same time and that he did so intentionally, although there may be a reasonable doubt that this is true. Intent is a subjective state of mind determined upon all of the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). A person is

presumed to know and intend the probable and natural consequences of his voluntary words or acts. *See, John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932).

The agency presented evidence that the respondent lived in Michigan throughout the period in question but that he obtained benefits through Wisconsin from November 18, 2013 through October 31, 2014, while still receiving benefits through Michigan. The primary evidence against the petitioner is the documentation showing that he received benefits in both states during this period. He did not appear at the hearing to refute any of the allegations the agency made against him. Based upon this, I find that agency has established by clear and convincing evidence that he committed an intentional program violation and correctly seeks to disqualify him from the program for 10 years.

CONCLUSIONS OF LAW

1. The respondent violated, and intended to violate, the FoodShare program rule specifying that he not make fraudulent statements to receive benefits in two places at once.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify him from the program for 10 years, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of May, 2016

\sMichael O'Brien
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED]



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 12, 2016.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]